

C I T A T I O N
T H E S T A T E O F T E X A S

CAUSE NO. D-1-GN-10-002855

08/23/2010
Delivered 08-21-2010
Tracy D. Sublesy
Authorized Person

REPUBLIC OF TEXAS BIKER RALLY, INC.

, Plaintiff

vs.

BIKINIS BAR & GRILL, LLC; BIKINIS BAR & GRILL - AUSTIN, LLC; BIKINIS SPORTS BAR & GRILL - 6TH STREET, LLC; BIKINIS SPORTS BAR & GRILL FRANCHISING, LLC; BIKINIS PROMOTIONS, LLC; AND BIKINIS REAL ESTATE, LLC

, Defendant

TO: BIKINIS BAR & GRILL, LLC
BY SERVING ITS REGISTERED AGENT
DOUG GULLER
505 W. 7TH STREET, #204
AUSTIN, TEXAS 78701

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Attached is a copy of the ROT RALLY'S ORIGINAL PETITION of the PLAINTIFF in the above styled and numbered cause, which was filed on AUGUST 17, 2010 in the 250TH JUDICIAL DISTRICT COURT of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, August 18, 2010.

REQUESTED BY:
CARL FREDERICK SCHWENKER
1621 WEST SIX STREET
AUSTIN, TX 78703
BUSINESS PHONE: (512) 374-0808
FAX: (512) 857-1294



AMALIA RODRIGUEZ-MENDOZA
Travis County District Clerk
Travis County Courthouse
1000 Guadalupe, P.O. Box 679003 (78767)
Austin, Texas 78701

By *Lydia Ann Martinez*
LYDIA ANN MARTINEZ, Deputy

- - - - - R E T U R N - - - - -

Came to hand on the _____ day of _____, _____ at _____ o'clock _____ M., and executed at _____ within the County of _____ on the _____ day of _____, _____, at _____ o'clock _____ M., by delivering to the within named _____, each in person, a true copy of this citation together with the NOTICE OF NEW EFILE MANDATE ORDER accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery.

Service Fee: \$ _____

Sheriff / Constable / Authorized Person

Sworn to and subscribed before me this the _____ day of _____, _____.

By: _____

Notary Public, THE STATE OF TEXAS

Printed Name of Server

County, Texas

D-1-GN-10-002855

SERVICE FEE NOT PAID

D01 - 50603

☐ Original

☒ Service Copy

C I T A T I O N
T H E S T A T E O F T E X A S
C A U S E N O . D - 1 - G N - 1 0 - 0 0 2 8 5 5

08/23/2010
Delivered ~~08-21-2010~~
Tran 2470 SC#4959
Authorized Person

REPUBLIC OF TEXAS BIKER RALLY, INC.

, Plaintiff

vs.

BIKINIS BAR & GRILL, LLC; BIKINIS BAR & GRILL - AUSTIN, LLC; BIKINIS SPORTS BAR & GRILL - 6TH STREET, LLC; BIKINIS SPORTS BAR & GRILL FRANCHISING, LLC; BIKINIS PROMOTIONS, LLC; AND BIKINIS REAL ESTATE, LLC

, Defendant

TO: BIKINIS BAR & GRILL - AUSTIN, LLC
BY SERVING ITS REGISTERED AGENT
DOUG GULLER
505 W. 7TH STREET, #204
AUSTIN, TEXAS 78701

Defendant, in the above styled and numbered cause:

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T H E S T A T E O F T E X A S
C A U S E N O . D - 1 - G N - 10 - 002855

REPUBLIC OF TEXAS BIKER RALLY, INC.

08/23/2010
Delivered 08-21-2010
Travis County
Authorized Person
Plaintiff

vs.

BIKINIS BAR & GRILL, LLC; BIKINIS BAR & GRILL - AUSTIN, LLC; BIKINIS SPORTS BAR & GRILL - 6TH STREET, LLC; BIKINIS SPORTS BAR & GRILL FRANCHISING, LLC; BIKINIS PROMOTIONS, LLC; AND BIKINIS REAL ESTATE, LLC

, Defendant

TO: BIKINIS SPORTS BAR & GRILL - 6TH STREET, LLC
BY SERVING ITS REGISTERED AGENT
DOUG GULLER
6901 IH-35
AUSTIN, TEXAS 78752

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

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Delivered 08/23/2010
08-21-2010
Authorized Person sc4459

REPUBLIC OF TEXAS BIKER RALLY, INC.

, Plaintiff

vs.

BIKINIS BAR & GRILL, LLC; BIKINIS BAR & GRILL - AUSTIN, LLC; BIKINIS SPORTS BAR & GRILL - 6TH STREET, LLC; BIKINIS SPORTS BAR & GRILL FRANCHISING, LLC; BIKINIS PROMOTIONS, LLC; AND BIKINIS REAL ESTATE, LLC

, Defendant

TO: BIKINIS SPORTS BAR & GRILL FRANCHISING, LLC
BY SERVING ITS REGISTERED AGENT
DOUGH GULLER
1201 TINNIN FORD ROAD, APT. 40
AUSTIN, TEXAS 78741

Defendant, in the above styled and numbered cause:

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08/23/2010
Delivered 08-21-2010
Authorized Person

REPUBLIC OF TEXAS BIKER RALLY, INC.

, Plaintiff

vs.

BIKINIS BAR & GRILL, LLC; BIKINIS BAR & GRILL - AUSTIN, LLC; BIKINIS SPORTS BAR & GRILL - 6TH STREET, LLC; BIKINIS SPORTS BAR & GRILL FRANCHISING, LLC; BIKINIS PROMOTIONS, LLC; AND BIKINIS REAL ESTATE, LLC

, Defendant

TO: BIKINIS PROMOTIONS, LLC
BY SERVING ITS REGISTERED AGENT
DOUG GULLER
505 W. 7TH STREET, #204
AUSTIN, TEXAS 78701

Defendant, in the above styled and numbered cause:

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Austin, Texas 78701

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08/23/2010
Delivered 08-21-2010
Authorized Person: [Signature] 5/19/10

REPUBLIC OF TEXAS BIKER RALLY, INC.

, Plaintiff

vs.

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, Defendant

TO: BIKINIS REAL ESTATE, LLC
BY SERVING ITS REGISTERED AGENT
DOUG GULLER
505 W. 7TH STREET, #204
AUSTIN, TEXAS 78701

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Notary Public, THE STATE OF TEXAS

Printed Name of Server

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D01 - 50603

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☒ Service Copy

Filed
10 August 17 P3:46
Amalia Rodriguez-Mendoza
District Clerk
Travis District
D-1-GN-10-002855

CAUSE No. D-1-GN-10-002855

REPUBLIC OF TEXAS BIKER RALLY, INC.,	§	IN THE DISTRICT COURT
PLAINTIFF,	§	
VS.	§	
	§	OF TRAVIS COUNTY, TEXAS
BIKINIS BAR & GRILL, LLC,	§	
BIKINIS BAR & GRILL - AUSTIN, LLC,	§	
BIKINIS SPORTS BAR & GRILL - 6 TH STREET, LLC,	§	250 TH JUDICIAL DISTRICT
BIKINIS SPORTS BAR & GRILL FRANCHISING, LLC,	§	
BIKINIS PROMOTIONS, LLC, AND	§	
BIKINIS REAL ESTATE, LLC,	§	
DEFENDANTS.	§	

**PLAINTIFF ROT RALLY'S
ORIGINAL PETITION**

Plaintiff Republic of Texas Biker Rally, Inc. ("ROT Rally") alleges as follows:

DISCOVERY

1. Discovery shall be under Level II of the discovery control plans.

PARTIES

2. Plaintiff *Republic of Texas Biker Rally, Inc.* ("ROT Rally") is a Texas corporation with its principal place of business in Austin, Texas.
3. Defendant *Bikinis Bar & Grill - Austin, LLC* ("BBG-Austin") is a Texas corporation with its registered address and principal place of business at 6901 IH-35, Austin, Texas 78752 and which may be served through its registered agent Doug Guller at 505 W. 7th Street, #204, Austin, Texas 78701.
4. Defendant *Bikinis Sports Bar & Grill - 6th Street, LLC* ("BSBG-6th Street")

is a Texas corporation with its registered address at 6901 IH-35, Austin, Texas 78752 and its principal place of business at 214 E. 6th Street, Austin, Texas 78701 and which may be served through its registered agent Doug Guller at 6901 IH-35, Austin, Texas 78752.

5. Defendant *Bikinis Promotions, LLC* ("Bikinis Promotions") is a Texas corporation with its registered address at 505 W. 7th Street, #204, Austin, Texas 78701 and which may be served through its registered agent and manager Doug Guller at 505 W. 7th Street, #204, Austin, Texas 78701.

6. Defendant *Bikinis Real Estate, LLC* ("Bikinis Real Estate") is a Texas corporation with its registered address at 505 W. 7th Street, #204, Austin, Texas 78701 and which may be served through its registered agent Doug Guller at 505 W. 7th Street, #204, Austin, Texas 78701.

7. Defendant *Bikinis Sports Bar & Grill Franchising, LLC* ("BSBG-Franchising") is a Texas corporation with its registered address at 1201 Tinnin Ford Road, Apt. 40, Austin, Texas 78741 and which may be served through its registered agent Doug Guller at that address.

8. Defendant *Bikinis Bar & Grill, LLC* ("BBG") is a Texas corporation with its registered address and principal place of business at 6901 N. IH-35, Austin, Texas 78752 and which may be served through its registered agent Doug Guller at 505 W. 7th Street, #204, Austin, Texas 78701. BBG is also identified as the corporate manager of

BBG-Austin in corporate documents filed with the Texas Secretary of State.

9. On information and belief, Doug Guller ("Guller") is the founder, manager, principal owner and principal managing agent of Defendants BBG, BBG-Austin, BSBG-6th, BSBG-Franchising, Bikinis Promotions, and Bikinis Real Estate (collectively the "*Bikinis Entities*") and may be served with process at 505 W. 7th Street, #204, Austin, Texas 78701. On information and belief, each of the Bikinis Entities conspired in and aided and abetted each other with the conduct described herein and, alternatively, Guller operates the Bikinis Entities a single business enterprise.

JURISDICTION AND VENUE

10. The amount in controversy exceeds the minimum jurisdictional amount for this Court and each defendant is amenable to the personal jurisdiction of this Court and to service of process in the state of Texas.

11. Travis County, Texas is the proper venue for this lawsuit. See TEX. CIV. PRAC. & REM. CODE § 15.002. The ROT Rally is headquartered in Travis County, Texas, each of the Bikinis Entities is based in Travis County, Texas, and a substantial part of the events giving rise to the claims occurred in Travis County, Texas.

NATURE OF THE CLAIMS

12. This is an action for federal trademark infringement under 15 U.S.C. §§ 1114 - 1118, false designation of origin, unfair competition and dilution of famous

marks under 15 U.S.C. §§ 1125(a) and 1125(c), common law trademark infringement and unfair competition under the laws of the State of Texas and TEX. BUS. & COM. CODE ANN. § 16.26, injury to business reputation and dilution of the distinctive quality of marks under TEX. BUS. & COM. CODE ANN. § 16.29, and counterfeiting under 15 U.S.C. § 1114. All causes of action are based on the same operative facts.

13. ROT Rally seeks injunctive, monetary and equitable relief for, *inter alia*, acts of trademark infringement and dilution, injury to business reputation, false designation of origin, unfair competition and counterfeiting based upon the Bikinis Entities' unauthorized marking, advertising, promotion, publicizing, sale and offer of sale of its products, events, activities and services bearing or under the ROT Rally's common law and federally-registered trademarks.

THE ROT RALLY

14. The Republic of Texas Biker Rally, Inc. ("ROT Rally") founded and, since 1996, has conducted an annual motorcycle rally and multi-day festival in Austin, Texas known and identified as the *Republic of Texas Biker Rally* (the "Rally"). The Rally is also commonly known and identified as the *R.O.T. Biker Rally*, *ROT Biker Rally*, *R.O.T. Rally* and *ROT Rally* and annually honors and supports members of the United States military and military veterans.

15. Based on the tremendous work and effort of ROT Rally personnel over the years and the immense goodwill that the Rally has engendered, the Rally has grown into one of the nation's largest and most respected motorcycle rallies and is now one of the Central-Texas region's top four annual economic revenue-generating activities, producing an estimated annual \$35,000,000 economic impact to the Austin economy. In recent years, approximately 45,000 motorcyclists and 200,000 spectators have annually come to Austin and Central Texas to attend and participate in the Rally and Rally-related events and activities conducted by the Rally and its affiliated sponsors, licensees and partners. Rally activities include several days of events such as motorcycle competitions and exhibitions, vendor displays, on-site entertainment and dining, concerts (by headlining acts such as *Willie Nelson*, *Waylon Jennings*, *Hank Williams, Jr.*, *Joan Jett*, *Brett Michaels*, *Blue Oyster Cult*, *Blood, Sweat & Tears*, *Jerry Lee Lewis* and the *Charlie Daniels Band*), rides through the Texas Hill Country led by celebrities, fireworks displays and a grand motorcycle parade down historic Congress Avenue that has been led by the likes of Dee Schneider of the band *Twisted Sister* and Texas Governor Rick Perry.

16. Based on the immense goodwill that the Rally has engendered, the Rally has also grown to include an online and multi-media presence, including web cams, live and delayed web feeds of events, broadcasts from the Rally, and internet blogs and

chat, allowing an active and ever-growing online community of Rally supporters and motorcycle enthusiasts to keep up with Rally-related events and activities throughout the year via the Rally's www.rotrally.com website.

17. The ROT Rally owns and uses several logos and marks in connection with the Rally and its related operations (e.g., Fig. 1), including the following **federally-registered trademarks and service-marks** (collectively, the "ROT RALLY MARKS"):

REPUBLIC OF TEXAS BIKER RALLY*	Reg. No. 3,688,518	registered August 18, 2009
R.O.T. BIKER RALLY®	Reg. No. 3,713,983	registered November 24, 2009
ROT BIKER RALLY®	Reg. No. 3,671,828	registered August 25, 2009
R.O.T. RALLY®	Reg. No. 3,704,194	registered November 3, 2009
ROT RALLY®	Reg. No. 3,678,565	registered September 8, 2009



Fig. 1. ROT Rally promotional Rally Trailer.

Each mark (along with the valuable goodwill that the marks represent) is an important and valuable intellectual property asset of the ROT Rally.

18. Because the Rally is the biggest motorcycle rally in Texas and has a reputation as one of the most attended and best organized motorcycle rallies in the world, sponsors and licensees are eager to affiliate and partner with the ROT Rally for promotional and sponsorship opportunities and for the promotion and marketing of licensed and sanctioned events and activities (e.g., location parties and "hot spots") under the ROT RALLY MARKS (particularly during the time around the annual Rally) and to advertise in Rally-affiliated publications.

19. In addition to promoting its own and its licensed sponsors' Rally-related activities under the ROT RALLY MARKS, the ROT Rally also designs, markets and sells official Rally-themed and branded merchandise (including shirts, caps, hats, t-shirts, sweatshirts, bandanas, pins, belt buckles, miscellaneous apparel, jewelry, mugs, glasses, flags, blankets and other similar items) under the ROT RALLY MARKS. This official Rally merchandise is available to the public and marketed and sold at the Rally, at official outlets around Austin throughout the duration of the Rally and online via the www.rotrally.com website.

20. To protect the goodwill associated with the Rally and the ROT RALLY MARKS, Rally merchandise and Rally sponsorship and promotional and licensing opportunities must be approved by Rally personnel.

21. The ROT Rally has spent a considerable amount of time, money and effort establishing the ROT RALLY MARKS in the minds of consumers and sponsors as representative of high-quality, fun events and associated quality merchandise. As a result, the ROT RALLY MARKS have now become associated in the minds of consumers with the ROT Rally and its Rally and with the ROT Rally as an organizer and promoter of high-quality, fun festivals and events and a retailer of high-quality, official Rally-related merchandise.

22. As a result of the extensive publicity, advertising and promotion of the Rally and sales of the ROT Rally's related merchandise under the ROT RALLY MARKS, the ROT RALLY MARKS have acquired secondary meaning so that they have come to identify the ROT Rally as the source of such goods, services, events and activities and so that any product or advertisement bearing such marks is immediately associated by consumers, the public and the trade as being a product or affiliate of the ROT Rally.

23. The ROT Rally and its annual Rally have achieved outstanding commercial success and widespread commercial recognition and attention in the press.

24. The goodwill developed in the ROT RALLY MARKS is extremely important in the marketing of the Rally and of the ROT Rally's associated merchandise and related sponsorship, advertising and promotional opportunities and is an asset of inestimable value to the ROT Rally.

25. The ROT Rally's federally-registered ROT RALLY MARKS and its other common law marks are inherently distinctive and are associated in the minds of consumers, the public and the trade with the ROT Rally. The ROT RALLY MARKS are arbitrary and fanciful marks that are entitled to the highest level of protection afforded by law.

THE BIKINIS ENTITIES' UNAUTHORIZED USE OF THE ROT RALLY MARKS

26. The Bikinis Entities own and operate several *Bikinis Sports Bar & Grill* sport-and-bikini-themed restaurant and bars in Texas and elsewhere and market the franchise rights to additional *Bikinis Sports Bar & Grill* restaurants and bars.

27. Without authorization from the ROT Rally and long after the ROT Rally's adoption, use and registration of the ROT RALLY MARKS, the Bikinis Entities played upon and wrongfully usurped the ROT Rally's goodwill by extensively and comprehensively using the ROT Rally's federally-registered ROT RALLY MARKS and other common law marks to promote various ROT Rally-themed activities and events at their *Bikinis Sports Bar & Grill* locations (as well as to promote the restaurant and bars themselves and to sell their goods, services, merchandise and food and drink offerings) during June 2010—the exact same time that the ROT Rally was holding and promoting its annual 2010 Rally in Austin, Texas.

28. For example, during the entirety of the 2010 Rally and for several days leading up to the Rally, the *Bikinis Sports Bar & Grill* restaurant located at 6901 IH-35, Austin, Texas (which on information and belief is managed, at least in part, by BBG-Austin) extensively promoted its food, events and parking-lot parties under the ROT Rally's ROT RALLY® and ROT BIKER RALLY® marks, as shown by its printing and posting of posters promoting a supposed "2010 ROT Rally Lineup" of bands and a bikini contest (Fig. 2):



Fig. 2. Poster

printing and distribution of handbills promoting the *Bikinis Sports Bar & Grill*'s weekend food specials, musical acts and bikini contest (Fig. 3):



Fig. 3. Handbill (front and back) with a ROT Rally logo advertising the "ROT BIKER RALLY AT Bikinis" and advertising and falsely promoting itself as the "ROT Rally Headquarters" on its marquee abutting highly-trafficked Interstate 35 (Fig. 4):



Figs. 4 (a) – (c). Bikinis' marquee at 6901 IH-35 (shown on several days).

29. Notably, in the printed promotional items shown above, the Bikinis Entities prominently note that they consider their own "Bikinis" moniker or logo to be a protectable trademark, as shown by the "TM" mark in the "BikinisTM" insignia (Fig. 5):



Fig. 5. Expanded portion of Bikinis Handbill

30. The Bikinis Entities also manufactured men's and women's t-shirts and tank tops bearing the ROT Rally's *ROT RALLY®* and *ROT BIKER RALLY®* marks (Figs 6 and 7):



Figs. 6(a) and 6(b). Bikinis' men's t-shirt (front and back) bearing the ROT RALLY MARKS.



Figs 7(a) and 7(b). Bikinis' women's tank top (front and back) bearing the ROT RALLY MARKS.

which the Bikinis Entities displayed, advertised and sold to consumers at *Bikinis Sports Bar & Grill* locations, including the 6th Street location (which on information and belief is managed by BSBG-6th Street) and at the 6901 IH-35 location (Figs. 8 - 13):



Fig. 8. Women's tank top displayed at I-35 location. Fig. 9. Men's t-shirts displayed at 6th Street location.



Figs. 10 and 11. Consumers wearing men's and women's t-shirts and tank tops at 6th Street location.

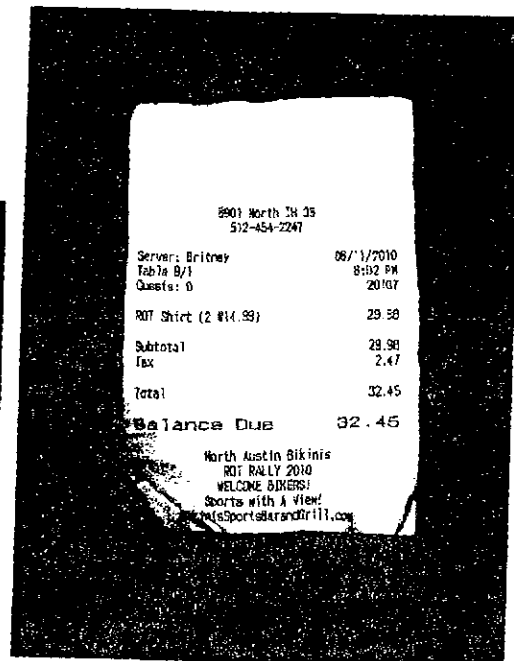


Fig. 12. Waitress selling tank top at I-35 location.

Fig. 13. Receipt for t-shirt sale at I-35 location.

31. The Bikinis Entities' systemic use of the ROT Rally's ROT RALLY® mark (and its other federally-registered marks) to usurp the ROT Rally's goodwill and to wrongfully and extensively promote the Bikinis Entities' business and restaurants is further indicated in Fig. 13, in which the "North Austin Bikinis" receipt (showing the sale of "ROT Shirt (2 @14.99)") explicitly bears the phrase "ROT RALLY 2010 WELCOME BIKERS!" On information and belief, the Bikinis Entities printed that phrase (or a similar phrase) on all receipts at each of their Austin-area *Bikinis Sports Bar & Grill* locations throughout the duration of the 2010 Rally.

32. As shown by their extensive unauthorized use of the ROT RALLY MARKS and other common law ROT Rally marks, the Bikinis Entities promoted themselves to the public as if they and their *Bikinis Sports Bar & Grill* locations were official ROT Rally sponsors and affiliates and as if the goods, merchandise, food, and beverages they sold and the activities and events they conducted during that time were approved, recommended, sanctioned, and/or officially licensed by the ROT Rally.

33. On information and belief, the Bikinis Entities continue to display and offer for sale their Bikinis-labeled t-shirts and tank tops prominently bearing the ROT Rally's ROT RALLY® and ROT BIKER RALLY® marks at each of their Austin-area *Bikinis Sports Bar & Grill* locations.

34. The events promoted and conducted by the Bikinis Entities and the goods, merchandise and food and beverages sold by the Bikinis' Entities under or in connection with their unauthorized use of the ROT RALLY MARKS and other common law ROT Rally marks compete with similar authentic offerings available from the ROT Rally and from its legitimate authorized licensees, sponsors and promotional partners.

35. The Bikinis Entities have used the terms "ROT Rally" and "ROT Biker Rally" on advertising and promotional materials in connection with their businesses in a manner identical or confusingly similar to the ROT Rally's ROT RALLY MARKS. The Bikinis Entities' use of these monikers is identical to or is a colorable variation of the ROT RALLY MARKS.

36. On information and belief, the Bikinis Entities' offerings under the ROT RALLY MARKS are of dissimilar quality from competitive offerings available from the ROT Rally and from its legitimate authorized licensees, sponsors and promotional partners.

37. By their acts described herein, the Bikinis Entities have caused their goods and services and misleading advertising and promotion to be displayed and sold in interstate commerce and within this judicial district.

38. Without the required authorization, the Bikinis Entities have used in interstate commerce a reproduction, counterfeit, copy or confusingly similar or

colorable imitation of the ROT Rally's ROT RALLY MARKS in connection with the sale, offer for sale, distribution, advertising and promotion of goods, merchandise, services and events, such use being likely to cause confusion or to cause mistake or to deceive. The Bikinis Entities' prominent and extensive use and display of a confusingly similar colorable imitation of the ROT Rally's famous ROT Rally name and ROT RALLY MARKS in advertising and on promotional materials in Texas for the Bikinis Entities' offerings has caused and is likely to cause confusion and mistake among the purchasing and consuming public, or will deceive the purchasing and consuming public as to the origin, sponsorship or approval of the goods, merchandise, food, beverages, services, events and activities of the Bikinis Entities and/or otherwise cause confusion or mistake among the purchasing and consuming public or deceive the purchasing and consuming public.

39. The ROT Rally has no control over the nature or quality of the Bikinis Entities' offerings under the "ROT Rally" and "ROT Biker Rally" monikers. Any failure, neglect or default by the Bikinis Entities has or will reflect adversely on the ROT Rally as the perceived source of origin or approval of the Bikinis Entities' offerings, thereby hampering efforts by the ROT Rally to continue to protect its outstanding reputation and resulting in a loss of sales and a loss of the considerable expenditures

that have been made to promote the Rally and the ROT Rally's legitimate offerings under its marks, all to the irreparable harm of the ROT Rally.

40. To the great detriment of the ROT Rally, the Bikinis Entities' unauthorized use of the ROT RALLY MARKS has resulted in the dilution of the exclusive rights that the ROT Rally is entitled to enjoy in connection with its marks and their use in connection with the promotion and sale of the ROT Rally's and its licensees' merchandise, services and events.

41. The Bikinis Entities' unauthorized use of the ROT Rally's federally-registered ROT RALLY MARKS (including the *ROT RALLY*® and *ROT BIKER RALLY*® marks) in connection with the Bikinis Entities' activities described above is likely to cause confusion, mistake, or deception as to the affiliation, connection or association of the Bikinis Entities with the ROT Rally or as to the identity, origin, sponsorship or approval of the Bikinis Entities' offerings such that consumers and purchasers will be likely to associate or have associated the Bikinis Entities' offerings (including activities, events, merchandise, goods, food, beverages and services) with and as originating from or being approved or recommended by the ROT Rally.¹

¹ Each of the photographs and graphics in the Figures above is a true and correct copy or representative example of what it purports to be.

COUNT I
FEDERAL TRADEMARK INFRINGEMENT

42. The ROT Rally re-alleges the above paragraphs.

43. The Bikinis Entities' extensive unauthorized use of the terms "ROT Rally" and "ROT Biker Rally", as described above, constitutes infringement of the ROT Rally's federally-registered ROT RALLY MARKS (including *ROT RALLY*® and *ROT BIKER RALLY*®) and the Bikinis Entities are liable to the ROT Rally for trademark infringement under 15 U.S.C. § 1114, *et seq.*

44. The ROT Rally has been and will continue to be irreparably harmed by the Bikinis Entities' conduct and the Bikinis Entities' wrongful infringing conduct will continue unless enjoined by this Court.

45. The ROT Rally has no adequate remedy at law.

COUNT II
COMMON LAW TRADEMARK INFRINGEMENT

46. The ROT Rally re-alleges the above paragraphs.

47. ROT Rally owns and enjoys common law rights in Texas and throughout the United States in and to the ROT RALLY MARKS (including the *ROT RALLY*® and *ROT BIKER RALLY*® marks) and other common law marks used in connection with its Rally and its related events and merchandise offerings.

48. The Bikinis Entities' use of the ROT Rally's marks (including the ROT RALLY MARKS) in connection with its *Bikinis Sports Bar & Grill* locations and with the Bikinis Entities' offerings described above has and is likely to cause confusion, mistake, or deception as to the affiliation, connection or association of the Bikinis Entities with the ROT Rally and/or as to the identity, origin, sponsorship or approval of the Bikinis Entities' restaurants, bars, merchandise, food, beverages, and promoted events, such that the public will be likely to associate or have associated such offerings with the ROT Rally.

49. The Bikinis Entities' activities constitute trademark infringement under the laws of the State of Texas (e.g., TEX. BUS. & COM. CODE ANN. § 16.26) and common law trademark infringement.

50. The Bikinis Entities' infringement will continue unless enjoined by this Court.

51. The ROT Rally has no adequate remedy at law.

COUNT III
FALSE DESIGNATION OF ORIGIN AND
UNFAIR COMPETITION UNDER 15 U.S.C. § 1125

52. The ROT Rally re-alleges the above paragraphs.

53. The Bikinis Entities' use of the terms "ROT Rally" and/or "ROT Biker Rally" constitutes a false designation of origin which is likely to deceive and, upon

information and belief, has deceived the public, customers and prospective customers into believing that the Bikinis Entities' offerings are those of the ROT Rally or its authorized licensees and, as a consequence, are likely to divert and have diverted customers away from the ROT Rally and its authorized licensees.

54. On information and belief, the Bikinis Entities continue to attempt to capitalize on the good name, reputation and goodwill of the ROT Rally.

55. The Bikinis Entities' acts, as alleged above, constitutes use of a word, term, name, symbol and a false designation of origin which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of the Bikinis Entities and the *Bikinis Sports Bar & Grill* locations with the ROT Rally, or as to the origin, sponsorship, or approval of the Bikinis Entities' goods, services and commercial activities by the ROT Rally, in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

56. The Bikinis Entities' acts, as alleged above, misrepresent the nature, characteristics, qualities, or origin of the Bikinis Entities' goods, services, or commercial activities in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

57. The Bikinis Entities' conduct has caused and, if not enjoined, will continue to cause, irreparable damage to the ROT Rally's ROT RALLY MARKS and other trademark rights, good name, reputation and goodwill in a manner that cannot be fully compensated by monetary damages.

58. The Bikinis Entities' false designation of origin and unfair competition will continue unless enjoined by this Court.

59. The ROT Rally has no adequate remedy at law.

COUNT IV
TRADEMARK DILUTION UNDER 15 U.S.C. § 1125(c)

60. The ROT Rally re-alleges the above paragraphs.

61. The ROT Rally's *ROT RALLY*® and *ROT BIKER RALLY*® names and marks became famous before the Bikinis Entities' use of those terms.

62. The Bikinis Entities' conduct has reduced the capacity of the ROT Rally's famous *ROT RALLY*® and *ROT BIKER RALLY*® names and marks to identify and distinguish the ROT Rally's goods, services, merchandise and sanctioned events.

63. The Bikinis Entities' acts, as alleged above, constitute dilution the ROT Rally's famous *ROT RALLY*® and *ROT BIKER RALLY*® names and marks in violation of the Lanham Act, 15 U.S.C. § 1125(c).

64. Alternatively and on information and belief, the Bikinis Entities willfully intended to trade on the ROT Rally's reputation and to cause dilution of the ROT Rally's famous *ROT RALLY*® and *ROT BIKER RALLY*® names and marks.

65. The Bikinis Entities' conduct has caused and, if not enjoined, will continue to cause, irreparable damage to the ROT Rally's famous *ROT RALLY*® and *ROT BIKER*

RALLY® names and marks, trademark rights, good name, reputation and good will in a manner that cannot be calculated or compensated by monetary damages.

66. The ROT Rally has no adequate remedy at law.

COUNT V

DILUTION OF MARKS AND INJURY TO BUSINESS REPUTATION

67. The ROT Rally re-alleges the above paragraphs.

68. The ROT Rally's *ROT RALLY*® and *ROT BIKER RALLY*® marks (along with its other ROT RALLY MARKS and common law marks) have a distinctive quality, which have become associated with the ROT Rally and its standards of high quality.

69. Through the Bikinis Entities' use of the ROT Rally's ROT RALLY MARKS and common law marks (including the *ROT RALLY*® and *ROT BIKER RALLY*® marks), there exists a likelihood of injury to the business reputation of the ROT Rally and a likelihood of dilution of the distinctive qualities of the ROT Rally's ROT RALLY MARKS and common law marks in violation of TEX. BUS. & COM. CODE ANN. § 16.29. The Bikinis Entities' use of the ROT Rally's ROT RALLY MARKS and common law marks on their merchandise and in their advertising and promotional materials is diluting the distinctive quality of the ROT Rally's ROT RALLY MARKS and common law marks and the ROT Rally name.

70. The Bikinis Entities will continue diluting the ROT Rally's ROT RALLY MARKS and common law marks and injuring the ROT Rally's business reputation unless enjoined by this Court.

71. The ROT Rally has no adequate remedy at law.

COUNT VI
COMMON LAW UNFAIR COMPETITION

72. The ROT Rally re-alleges the above paragraphs.

73. The Bikinis Entities have been guilty of unfair competition, deceptive advertising, and other unfair trade practices in violation of the Texas common law of unfair competition based on the Bikinis Entities' use of the ROT Rally's ROT RALLY MARKS and other common law marks without authorization, causing the ROT Rally damages and loss of profits.

74. Alternatively and on information and belief, the Bikinis Entities' conduct has been intentional and willful in nature and will continue unless enjoined by this Court.

75. The ROT Rally has no adequate remedy at law.

COUNT VII
COUNTERFEITING UNDER 15 U.S.C. § 1114 AND WILLFUL INFRINGEMENT

76. The ROT Rally re-alleges the above paragraphs and alternatively alleges as follows.

77. On information and belief, the Bikinis Entities knowingly and intentionally manufactured, displayed, advertised, distributed, offered for sale and sold items and/or services that bear or were identified by or promoted under spurious designations or marks that are identical to or substantially indistinguishable from the ROT Rally's protected ROT RALLY MARKS.

78. On information and belief, the Bikinis Entities used these spurious designations knowing they are counterfeit in connection with their advertisement, promotion, sale, offering for sale and distribution of goods, services and commercial activities.

79. The Bikinis Entities' unauthorized use of the ROT Rally's protected ROT RALLY MARKS on and in connection with the Bikinis Entities' advertisement, promotion, sale, offering for sale and distribution of goods, services and commercial activities constitutes the Bikinis Entities' use of the ROT RALLY MARKS in commerce.

80. On information and belief, the Bikinis Entities' unauthorized use of the ROT RALLY MARKS as set forth above is likely to: (a) cause confusion, mistake and deception; (b) cause the public to erroneously believe that the Bikinis Entities' offerings are the same as the ROT Rally's offerings or that the Bikinis Entities are authorized, sponsored or approved by the ROT Rally or that the Bikinis Entities are affiliated, connected or associated with or in some way related to the ROT Rally; and (c) result in

the Bikinis Entities' unfairly benefiting from the ROT Rally's advertising and promotional efforts and profiting from the reputation of the ROT Rally and its ROT RALLY MARKS all to the substantial and irreparable injury of the public, the ROT Rally, the ROT RALLY MARKS and the substantial goodwill represented by such marks.

81. This confusion causes irreparable harm to the ROT Rally and weakens the distinctive quality of the ROT RALLY MARKS.

82. On information and belief, the Bikinis Entities adopted and used the ROT Rally's ROT RALLY MARKS and other common law names and marks while cognizant of the ROT Rally's long history of prior use of the ROT Rally name, the ROT RALLY MARKS and the ROT Rally's other common law names and marks. The Bikinis Entities' activities were willful acts in derogation of the ROT Rally's rights.

83. On information and belief, the Bikinis Entities' conduct was commenced in spite of the Bikinis Entities' knowledge that any unauthorized use of the ROT Rally's name, the ROT RALLY MARKS and the ROT Rally's other common law names and marks or any reproductions, counterfeits, copies or colorable imitations of such names and/or marks are violations of the ROT Rally's rights.

84. On information and belief, the Bikinis Entities continue to knowingly and willfully capitalize on the good name, reputation and goodwill of the ROT Rally and use the ROT Rally's name, the ROT RALLY MARKS and/or the ROT Rally's other common

law names and marks without permission or authority of the ROT Rally, with knowledge of the ROT Rally's protectable rights in its names and marks, and in manifest violation of ROT Rally's rights.

85. On information and belief, the Bikinis Entities' acts are both willful and malicious.

86. On information and belief, the Bikinis Entities' conduct constitutes willful and intentional infringement of the ROT Rally's name, the ROT RALLY MARKS and the ROT Rally's other common law names and marks. Such actions have been undertaken by the Bikinis Entities in disregard of the ROT Rally's rights.

87. On information and belief, the Bikinis Entities' acts constitute trademark counterfeiting and willful trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114. Accordingly, the Bikinis Entities are liable to the ROT Rally for all damages stemming from their production of counterfeit or infringing goods and their promotion (and sale) of goods, services, events and commercial activities using counterfeit or infringing versions of the ROT Rally's ROT RALLY MARKS.

88. By using counterfeits and infringements of the ROT RALLY MARKS in connection with the Bikinis Entities' offerings, the Bikinis Entities are trading on the goodwill and reputation of the ROT Rally and creating the false impression that the Bikinis Entities' merchandise and their events are the ROT Rally's legitimate products

or are sanctioned by the ROT Rally.

89. On information and belief, the Bikinis Entities have been unjustly enriched by illegally using and misappropriating the ROT Rally's intellectual property for the Bikinis Entities' own financial gain and have unfairly benefited and profited from usurping the ROT Rally's outstanding reputation and its significant promotion of its ROT RALLY MARKS.

90. The ROT Rally has had no control over the nature and quality of the products sold or events promoted by the Bikinis Entities bearing or under counterfeits and infringements of the ROT RALLY MARKS.

91. On information and belief, the Bikinis Entities have acted with reckless disregard for the ROT Rally's rights or were willfully blind in connection with their unlawful activities.

92. On information and belief, the Bikinis Entities have willfully and maliciously engaged in their counterfeiting and infringing activities.

93. As a result of the foregoing, this case constitutes an exceptional case under 15 U.S.C. § 1117(a) and/or a case of intentional counterfeiting under 15 U.S.C. § 1117(b).

94. The ROT Rally has suffered irreparable harm and damages as a result of the acts of the Bikinis Entities.

95. The injuries and damages sustained by the ROT Rally have been directly

and proximately caused by the Bikinis Entities' wrongful advertisement, promotion, distribution, sale and offers of sale of their goods bearing, and promotion of their commercial events and activities under, infringements or counterfeits of the ROT RALLY MARKS.

96. By reason of the foregoing, the Bikinis Entities are liable to the ROT Rally for: (a) an amount representing the Bikinis Entities' illicit profits, three (3) times the damages sustained by the ROT Rally plus the costs of the action, or, at the ROT Rally's election, statutory damages in an amount of up to \$2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed as provided by 15 U.S.C. § 1117(c) of the Lanham Act, and (b) reasonable attorney's fees, investigative fees and pre-judgment interest pursuant to 15 U.S.C. § 1117.

COUNT VIII
CONSTRUCTIVE TRUST

97. The ROT Rally re-alleges the above paragraphs.

98. On information and belief, the Bikinis Entities have inequitably profited from their wrongful adoption and use of the ROT Rally's name, the ROT RALLY MARKS and the ROT Rally's other common law names and marks and have been unjustly enriched by their wrongful actions described above.

99. To protect the ROT Rally's rightful interests, the ROT Rally is entitled to and the Bikinis Entities' actions necessitate the imposition of a constructive trust over all

funds received by the Bikinis Entities in connection with their wrongful use of the ROT Rally's name, the ROT RALLY MARKS and the ROT Rally's other common law names and marks.

100. To prevent further immediate and irreparable harm, the Court should immediately enjoin any disposition by the Bikinis Entities of any such funds.

COUNT IV
CONSPIRACY

101. The ROT Rally re-alleges the above paragraphs.

102. The actions of Bikinis Entities alleged above constitute a combination to accomplish an unlawful purpose or a lawful purpose by an unlawful means, which was agreed to by members of the Bikinis Entities.

103. Each and every defendant is equally and vicariously liable to the ROT Rally for the damages proximately caused the actions described above.

PRAYER

Accordingly, the ROT Rally prays for:

A. Preliminary and permanent injunctive relief enjoining and restraining the Bikinis Entities, its officers, managers, agents, servants, employees, attorneys and all other persons and entities in privity or acting in concert with them from:

i. Using, reproducing, advertising or displaying the ROT Rally's name, the ROT RALLY MARKS and/or the ROT Rally's other common law names and

marks in connection with the offer or sale of any goods, or the rendering of any services or any commercial activities;

ii. Using, reproducing, advertising or promoting any mark or name which is confusingly similar to, or a colorable imitation of, the ROT Rally's name or the ROT RALLY MARKS;

iii. Using, reproducing, advertising or promoting any mark or name which may be calculated to represent or which has the effect of representing that the products, services or commercial activities of the Bikinis Entities or any other person or entity are sponsored by, authorized by or in some way associated with the ROT Rally;

iv. Using, reproducing, advertising or promoting in connection with any product or service the name or mark "ROT Rally", "ROT Biker Rally", any of the ROT RALLY MARKS or the ROT Rally's other common law names and marks, or any confusingly similar mark or colorable imitation of such marks to identify any goods or the rendering of any services not authorized by the ROT Rally;

v. Injuring the commercial reputation, renown and good will of the ROT Rally or the ROT RALLY MARKS or engaging in any course of conduct likely to cause confusion, deception or mistake, or injure the ROT Rally's business reputation or weaken the distinctive quality of the ROT RALLY MARKS.

vi. engaging in any conduct constituting infringement or

counterfeiting of the ROT Rally's ROT RALLY MARKS or using or reproducing any word, term, name, symbol or device or any combination thereof on any product, on any marketing materials, or in connection with any services or commercial activities, which confuses or falsely represents or misleads, is calculated to confuse, falsely misrepresent or mislead, or which has the effect of confusing, falsely representing or misleading others that the products, services or activities of the Bikinis Entities are in some way connected with the ROT Rally or are sponsored, approved or licensed by the ROT Rally;

vii. Otherwise unfairly competing with the ROT Rally; or

viii. Secreting, destroying, altering, removing, or otherwise dealing with the unauthorized products, merchandise or promotional materials or any books or records which contain any information relating to the importing, manufacturing, producing, distributing, circulating, selling, marketing, offering for sale, advertising, promoting, or displaying of all unauthorized products, merchandise or promotional materials which infringe the ROT Rally's ROT RALLY MARKS.

B. An order under 15 U.S.C. § 1116 directing the Bikinis Entities to file with this Court and serve upon the ROT Rally's counsel, within thirty (30) days after service upon the Bikinis Entities of any injunction that issues under 15 U.S.C. § 1125(a), a report in writing under oath setting forth in detail the manner and form in which the Bikinis Entities have complied with the injunction;

C. An order under 15 U.S.C. § 1118 directing the Bikinis Entities to deliver to the ROT Rally for destruction or disposal any and all merchandise, advertisements or other materials in their possession or under their control bearing the ROT Rally name or any of the ROT RALLY MARKS and/or the ROT Rally's other common law names or marks in any way or any simulation, reproduction, counterfeit, copy or colorable imitation thereof, and all plates, molds, matrices and other means of production of such offending merchandise, advertisements, print-outs or other materials;

D. An award to the ROT Rally of its compensatory and exemplary damages as allowed by law and under the Lanham Act and, including under 15 U.S.C. § 1117(a), an award of the Bikinis Entities profits, three (3) times the damages suffered by the ROT Rally and pre-judgment interest and the costs of suit;

E. At the ROT Rally's election, statutory damages in an amount of up to \$2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed as provided by 15 U.S.C. § 1117(c) of the Lanham Act;

F. An accounting by the Bikinis Entities to the ROT Rally under 15 U.S.C. § 1117 for any and all profits derived by the Bikinis Entities from its wrongful acts described herein;

G. Imposition of a constructive trust upon the Bikinis Entities and their bank and financial accounts and disgorgement of all proceeds and restitution of all monies

wrongfully received and held by the Bikinis Entities;

H. A declaration that this is an exceptional case and an award to the ROT Rally of its reasonable costs, attorneys' fees and investigators' fees as authorized by 15 U.S.C. § 1117 and as otherwise allowed by law;

I. An Order under 11 U.S.C.S. § 523(a)(6) that defendants be prohibited from any discharge under 11 U.S.C.S. § 727 for malicious, willful and fraudulent injury to the ROT Rally;

J. An award of all exemplary and punitive damages to which the ROT Rally may be entitled and any other remedy to which it may be entitled as provided for in 15 U.S.C. §§ 1116 and 1117 or under state law;

K. Pre-judgment and post-judgment interest on any damage awards at the maximum rate permitted by law; and,

L. Such other and further relief as the Court may deem just, proper or necessary under the circumstances.

JURY DEMAND

Under TEX. R. CIV. P. 216 and Texas Government Code § 51.604(a), the ROT Rally request a jury trial on all issues so triable in this action and tenders the appropriate fee.

REQUESTS FOR DISCLOSURE TO DEFENDANTS

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, each Defendant shall


disclose (and shall produce copies of any responsive documents), within 30 days from the service of this request, the information or materials described in Rule 194.2(a)-(l) of the Texas Rules of Civil Procedure.

**ROT RALLY'S FIRST SET OF COMBINED
DISCOVERY REQUESTS TO DEFENDANTS**

Plaintiff Republic of Texas Biker Rally, Inc. requests under the Texas Rule of Civil Procedure that each Defendant fully respond to the interrogatories and requests for admission attached as Exhibit A and produce and/or permit inspection and copying of the documents and tangible items specified in Exhibit A at the offices of the undersigned counsel of record (unless another location is agreed upon by the parties) not more than thirty (30) days after the service of this document.²

Respectfully submitted,

LAW OFFICES OF CARL F. SCHWENKER

By: 

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Texas Bar No. 00788374
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ATTORNEYS FOR THE REPUBLIC
OF TEXAS BIKER RALLY, INC.

² For each document or other requested information that you assert is privileged or not discoverable, please identify that document or other requested information, state the specific grounds for the claim of privilege or exclusion, and provide a Privilege Log in compliance with Rule 193.3.